

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION**

LENNEL J. CHOICE, JR., #2106233	§	
VS.	§	CIVIL ACTION NO. 6:20cv268
DIRECTOR, TDCJ-CID	§	

**ORDER ADOPTING REPORT AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE**

Petitioner Lennel Jones Choice, Jr., a prisoner formerly confined at the Smith County Jail proceeding *pro se*, filed this federal petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. The petition was referred to United States Magistrate Judge K. Nicole Mitchell for findings of fact, conclusions of law, and recommendations for the disposition of the petition.

On March 24, 2022, Judge Mitchell issued a Report (Docket No. 11), recommending that Petitioner’s habeas proceeding be dismissed, without prejudice, for Petitioner’s failure to prosecute his case. Judge Mitchell further recommended that Petitioner be denied a certificate of appealability *sua sponte*, referring only to this cause number. A copy of this Report was sent to Petitioner at his last-known address, with an acknowledgment card. The docket reflects that the Report was returned as “undeliverable,” with a notation of “no longer at this address RTS,” (Docket No. 12). To date, however, no objections have been filed and Petitioner has not communicated with the Court.

The Court reviews the findings and conclusions of the Magistrate Judge de novo only if a party objects within fourteen days of the Report and Recommendation.

28 U.S.C. § 636(b)(1). In conducting a de novo review, the Court examines the entire record and makes an independent assessment under the law. *Douglass v. United Servs. Auto. Ass’n*, 79 F.3d 1415, 1430 (5th Cir. 1996) (en banc), *superseded on other grounds by statute*, 28 U.S.C. § 636(b)(1) (extending the time to file objections from ten days to fourteen days).

Here, Petitioner has not filed objections. The docket reflects that two pieces of Court mail sent to Petitioner were returned as “undeliverable,” (Docket Nos. 10, 12), and Petitioner never filed a notice of a change of address.


The Court therefore reviews the Magistrate Judge’s findings for clear error or abuse of discretion and reviews her legal conclusions to determine whether they are contrary to law. *See United States v. Wilson*, 864 F.2d 1219, 1221 (5th Cir. 1989), *cert. denied*, 492 U.S. 918 (1989) (holding that, if no objections to a Magistrate Judge’s Report are filed, the standard of review is “clearly erroneous, abuse of discretion and contrary to law.”).

Having reviewed the Magistrate Judge’s Report and the record in this case, the Court finds no clear error or abuse of discretion and no conclusions contrary to law. Accordingly, the Court hereby **ADOPTS** the Report and Recommendation of the United States Magistrate Judge (Docket No. 11) as the findings of this Court. Therefore, it is

ORDERED that the above-styled habeas proceeding is **DISMISSED**, without prejudice, for Petitioner’s failure to prosecute his case. Petitioner is further **DENIED** a certificate of appealability *sua sponte*, which refers only to this cause number and

does not prevent refiling. Any and all motions which may be pending in this action are hereby **DENIED**.

So **ORDERED** and **SIGNED** this **13th** day of **April, 2022**.



JEREMY D. KERNODLE
UNITED STATES DISTRICT JUDGE